

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. Excise Tax

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. Settlement of Disputes

In the event of a dispute, Contractor shall file a "Notice of Dispute" with a Deputy Treasurer of the State Treasurer's Office within ten (10) days of discovery of the problem. Within ten (10) days, the Deputy Treasurer shall meet with the representatives of Contractor and [name of state agency] identified in Paragraph 4 of Exhibit A for purposes of resolving the dispute. The decision of the Deputy Treasurer shall be final.

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. Evaluation of Contractor

(A Contractor Evaluation clause is REQUIRED in consultant services agreements and is optional in other types of agreements. You may delete if this is not a consultant agreement and you do not want a contractor evaluation provision.)

Within sixty (60) days after the completion of this Agreement, the Contract Manager shall complete a written evaluation of Contractor's performance under this Agreement. If this Agreement is a contract for consultant services and if Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, and to the Contractor within fifteen (15) working days of the completion of the evaluation.

4. No Agency Liability

(This is a contingent fee prohibition clause commonly placed in federally-funded contracts.)

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, [name of state agency] shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

5. Potential Subcontractors

(Applicable to agreements in which the Contractor subcontracts out a portion of the work.)

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the [name of state agency] and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the [name of state agency] for the acts and omissions of its subcontractors and of persons either directly

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or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the obligation of [name of state agency] to make payments to the Contractor. As a result, the [name of state agency] shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

6. Force Majeure

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

7. Waivers

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

8. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

9. Confidentiality

All financial, statistical, personal, technical and other data and information relating to the operations of [name of state agency] which are designated confidential by [name of state agency] and become available to Contractor shall be protected by Contractor from unauthorized use and disclosure.

10. Attorney's Fees and Costs

In the event of any litigation between the parties to enforce or interpret the provisions of this Agreement, the non-prevailing party shall, unless both parties agree to the contrary, pay the expenses arising from such litigation, including reasonable attorney's fees, allocated costs for services of in-house counsel, and court costs, of the prevailing party. These expenses shall be in addition to any other relief to which the prevailing party may be entitled.

11. Titles/Section Headings

Titles and headings are not part of this Agreement; instead they are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

12. Choice of Law

Notwithstanding Paragraph 14 of Exhibit C (General Terms and Conditions), this Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment rendered thereby) shall be brought in state court sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each

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party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

13. Notices

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder, Contractor and [name of state agency] have designated in Paragraph 4 of Exhibit A specific staff representatives for the purpose of communication between the parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or if mailed, three (3) days after the date of mailing, unless by express mail, telecopy or telegraph, then upon the date of confirmed receipt, to the representatives named in Paragraph 4 of Exhibit A.

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

14. Permits and Licenses

Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

15. Books and Records

Contractor shall keep accurate books and records connected with the performance of this Agreement. Contractor shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at [location where records are to be maintained] and shall be available for inspection and copying by [name of state agency] and its representatives at any time.

16. Additional Documents

Contractor and [name of state agency] agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

17. Disabled Veteran Business Participation

[DVBE participation goals may be waived, but must have been waived IN ADVANCE of the RFP by a Deputy Treasurer. If waived, delete all 4 paragraphs.]

If DVBE is not waived, decide which paragraph between 1 & 2 applies to your contract. Use Paragraph (1) when the vendor will participate in DVBE; use Paragraph (2) when the vendor is complying with Good Faith Effort. Paragraphs 3 & 4 should always remain in Exhibit D.

1. Contractor agrees that as contractor of [agency name], it will meet the requirements of [agency name] policies that embrace section 10115 et seq. of the Public Contract Code regarding 3% Disabled Veteran Business Enterprise (DVBE) participation goal for state contracts. DVBE is referred to hereafter as a "Targeted Business Enterprise."

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2. Contractor, in contracting for goods and services pursuant to this Agreement, shall make good faith efforts as defined in Public Contract Code section 10115.2 or, if this is a contract relating to the provision of professional bond services, as defined in Title 2, California Code of Regulations, section 1899.501(e).
3. Nothing shall be construed to authorize contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin or ancestry.
4. Contractor agrees to provide **[agency name]** or its delegate with any information reasonably necessary to comply with the obligations set forth in the applicable provisions of Public Contract Code sections 10115, et seq. Upon reasonable notice, Contractor shall permit **[agency name]** or its delegate access to Contractor's premises during normal business hours to interview employees and to inspect and copy books, records, accounts, and other materials for the purpose of determining compliance with the applicable provisions of Public Contract Code sections 10115, et seq. and Title 2, California Code of Regulations, sections 1896.60 et seq. Contractor further agrees to maintain such records for a period of (3) years after final payment under this Agreement. Contractor further agrees to make this paragraph applicable to all subcontracts entered hereunder.

18. Key Personnel

[If this is NOT a contract for consultant services and Contractor's Key Personnel are NOT MATERIAL to the State's selection of the Contractor for this Agreement, this paragraph may be deleted in its entirety. If this paragraph is deleted, you must also delete the highlighted text in Paragraphs 19 and 22.]

- a. A resume for each member of Contractor's staff who will exercise a significant administrative, policy, or consulting role under this Agreement is attached to this Agreement as **[Attachment ____ / Exhibit ____]**. These members of Contractor's staff shall be hereafter referred to (both individually and collectively) as "Key Personnel."
- b. Contractor shall not substitute, replace or reassign Key Personnel without the prior approval of **[name of state agency]** and an amendment to this Agreement.
- c. This Agreement may be terminated immediately, in the sole discretion of **[name of state agency]** and upon written notice from **[name of state agency]** to Contractor, because of any change in or departure of any of the Key Personnel.

19. Changes in Control, Organization or {Key Personnel}

[If Key Personnel paragraph (Paragraph 18) has been deleted, delete the highlighted text in this paragraph. If Key Personnel paragraph has NOT been deleted, retain the highlighted text in this paragraph, and delete only the "{ }".]

Contractor shall promptly, and in any case within five (5) calendar days, notify **[name of state agency]** in writing: (i) if any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; (ii) of any change in Contractor's staff who exercises a significant administrative, policy, or consulting role under this Agreement, **[including without limitation the Key Personnel]**; (iii) of any change in the majority ownership, control, or business structure of Contractor; or (iv) of any other material change in Contractor's business, partnership or

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corporate organization. All written notices from Contractor under this provision shall contain sufficient information to permit [name of state agency] to evaluate the changes within Contractor's staff or organization under the same criteria as was used by [name of state agency] in its award of this Agreement to Contractor. Contractor agrees to provide [name of state agency] with such additional information as requested by [name of state agency].

20. Insurance Requirements

Contractor warrants that it carries adequate liability, worker's compensation and other necessary insurance and shall maintain such insurance at levels acceptable to [name of state agency] in full force and effect during the term of this Agreement. Contractor agrees to furnish satisfactory evidence of this insurance coverage to [name of state agency] upon request.

21. Subcontractors

- a. Contractor shall perform the work contemplated by this Agreement with resources available within its own organization except for subcontracted work identified in this Agreement or other attachment incorporated hereto. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by [name of state agency]. The subcontractor must be mutually agreed upon in advance by both parties.
- b. Contractor shall require that any subcontractor agree to be bound by all provisions of this Agreement, as applicable.

22. Notice of Proceedings

[If Key Personnel paragraph (Paragraph 18) has been deleted, delete the highlighted text in this paragraph. If Key Personnel paragraph has NOT been deleted, retain the highlighted text in this paragraph, and delete only the "{ }."]

Contractor shall promptly notify [name of state agency] in writing of any investigation, examination or other proceeding involving Contractor {or any Key Personnel} commenced by any regulatory agency, which proceeding is not conducted in the ordinary course of Contractor's business.

23. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

24. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and [name of state agency] contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

25. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by [name of state agency].

26. Services or Procurement Resulting from Agreement

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[This provision is designed for consultant services contracts. You may wish to delete for other types of contracts.]

Neither Contractor, nor any of its subsidiaries, officers or directors, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that Contractor provides under this Agreement.

27. Agreement Does Not Violate Law

Contractor represents and warrants that neither the execution of this Agreement nor the acts contemplated hereby nor compliance by Contractor with any provisions hereof will:

- a. Violate any provision of the charter documents of Contractor;
- b. Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or
- c. Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of Contractor.

28. Power and Authority

Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement. Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

29. Signature Authorization

The person signing this Agreement warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

30. Entire Agreement; Order of Precedence

- a. This Agreement, including documents that have been incorporated in this Agreement by reference, contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement.
- b. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; (iii) the RFP; (iv) Contractor's response to the RFP; and (v) any other provisions, terms, or materials incorporated herein.

31. Termination at Option of *[name of state agency]*

In addition to the provisions of Paragraph 7 of Exhibit C (General Terms and Conditions), this Agreement may be terminated in whole or in part at any time upon ***[insert number of days for notice]***

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of termination] calendar days' written notice by [name of state agency], for any reason. Upon receipt of a termination notice, Contractor shall promptly discontinue all services affected unless the notice specifies otherwise. In the event [name of state agency] terminates all or a portion of this Agreement for any reason, it is understood that [name of state agency] will provide payment to Contractor for satisfactory services rendered prior to the termination, but not in excess of the maximum amount of this Agreement.

32. Termination for Insolvency

Contractor shall notify [name of state agency] immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed and qualifies. In the event of any of the foregoing events, or if [name of state agency] determines, based on reliable information, that there is a substantial probability that Contractor will be financially unable to continue performance under this Agreement, [name of state agency] may terminate this Agreement and all further rights and obligations immediately [by giving five (5) days' notice in writing in the manner specified herein].

33. Convenience

If after notice of termination for failure to fulfill contract obligations, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of [name of state agency].

34. Completion

In the event of termination for default, [name of state agency] reserves the right to take over and complete the work by contract or other means. In such case, Contractor will be liable to [name of state agency] for any additional cost incurred by [name of state agency] to complete the work whether reimbursed or not.

35. Effect of Termination

All duties and obligations of [name of state agency] and Contractor shall cease upon termination of this Agreement, except that:

- a. Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination; and
- b. Contractor shall provide for the return of all records of [name of state agency] to [name of state agency] or its designee and shall cooperate fully to effect an orderly transfer of services.

36. Termination for Expatriation

Contractor shall notify STO immediately in writing in the event that Contractor or its parent files any notice with the Securities and Exchange Commission that Contractor intends to reincorporate offshore. In the event of such notice, STO may terminate this Agreement and all further rights and obligations immediately by giving five days notice in writing in the manner specified herein.

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37. Compliance With Political Reform Act

[CONTRACTOR] acknowledges that [agency name] is subject to the provisions of the Fair Political Practices laws of California (Government Code Sections 81000, et seq., and all regulations adopted thereunder, including, but not limited to, California Code of Regulations Sections 18700, et. Seq.) and **[CONTRACTOR]** shall comply promptly with any requirement thereunder. If required by law, **[CONTRACTOR]** shall require its personnel, including without limitation, its Key Personnel all later substitutions therefore, to file Statements of Economic Interests in compliance with the Conflict of Interest Code for the Office of the State Treasurer and the various boards, authorities, commissions, and committees chaired by the State Treasurer, including [agency name] (California Code of Regulations, Title 2, Division 2, Chapter 4, Section 1897). All such reports shall be filed simultaneously with [agency name].

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ADDITIONAL PROVISIONS

[List in Exhibit E those provisions that are specific to the type of services being performed under this Agreement. If none of these provisions applies to this Agreement, delete this exhibit.]

1. PROGRESS REPORTS

Contractor shall submit progress reports to [name of state agency], as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Contractor will be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

PROGRESS PAYMENTS (OPTION #1)

Progress payments are permitted for tasks completed under this Agreement. Ten percent (10%) of the invoiced amount shall be withheld pending final completion of each task. Any funds withheld with regard to a particular task may be paid upon completion of that task.

PROGRESS PAYMENTS (OPTION #2)

Progress payments are permitted for work performed under this Agreement. Ten percent (10%) of the invoiced amount shall be withheld pending final completion of the Agreement and receipt and acceptance by [name of state agency] of any final reports required under this Agreement.

PROGRESS PAYMENTS (OPTION #3)

If progress payments are allowed for services performed under this Agreement, not less than ten percent (10%) of the amount of this Agreement shall be withheld pending final completion of this Agreement, and receipt and acceptance by [name of state agency] of any final reports required under this Agreement. However, for those contracts that consist entirely of separate and distinct tasks, any funds withheld with regard to a particular task may be paid upon completion of that particular task.

PROGRESS PAYMENTS (OPTION #4)

[Name of state agency] will determine what Contractor has earned during the period for which payment is being requested on the basis of the terms of this Agreement and shall retain out of such earnings an amount at least equal to 10 percent (10%) thereof, pending satisfactory completion of the entirety of this Agreement.

2. TEN PERCENT 10% WITHHOLDING

In accordance with the requirements set forth in the State Contracting Manual, Section 7.33.B, [name of state agency] may withhold, from the invoiced payment amount to Contractor, an amount equal to ten percent (10%) of that payment. Such retained amount shall be held by [name of state agency] and only released to Contractor upon the determination of the staff of [name of state agency] that Contractor has satisfactorily

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completed all of the required services as itemized on the invoice. If it is determined that an amount is withheld, it shall be released pending final completion of the Agreement.

3. MILESTONES

In consideration for the satisfactory completion of the services described herein, [name of state agency] agrees to pay Contractor, in arrears, upon receipt of an invoice in triplicate, for services rendered under this Agreement. The invoice shall be submitted by Contractor in sufficient scope and detail to define the actual work performed and specific milestones completed, including a description of the activities of Contractor and subcontractors and the hours allocated to those activities. The hourly rate for services rendered shall not exceed those as set forth herein or as attached hereto.

4. ITEMIZE EXPENSES

Contractor will itemize any actual expenses incurred in addition to those contracted. Such itemizing shall be in accordance with Paragraph 12 of Exhibit C (General Terms and Conditions). The total cost of such additional expenses, together with the cost of services rendered, shall not exceed the maximum amount of this Agreement.

5. LEGAL SERVICES AGREEMENTS

In accordance with Public Contract Code Section 10353.5, Contractor shall:

- Adhere to legal cost and billing guidelines designated by [name of state agency]
- Adhere to litigation plans designated by [name of state agency]
- Adhere to case phasing of activities designated by [name of state agency]
- Submit and adhere to legal budgets as designated by [name of state agency]
- Maintain legal malpractice insurance in an amount not less than the amount designated by [name of state agency]
- Submit to legal bill audits and law firm audits if requested by [name of state agency]. The audits may be conducted by employees and designees of [name of state agency] or by any legal cost control providers retained by [name of state agency] for purpose.
- Submit to a legal cost and utilization review, as determined by [name of state agency].

6. CONFLICT OF INTEREST; NO PROFIT

- A. Contractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.
- B. Contractor shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.